



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

DEC 19 2014

Mr. Eugene Foster, Manager
Watershed Management Section
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

RE: EPA Comments on the Nonpoint Source Management Program Update

Mr. Foster:

On September 30, 2014, US Environmental Protection Agency received the submission of the final Oregon Nonpoint Source Management (NPS) Program Plan (Plan) for review. We appreciate your submitting the Plan on time along with all comments you received from the public. This will help us meet our deadlines to have an approvable NPS plan under the Clean Water Act Section 319(h)(8). EPA reviewed the NPS plans using the guidance, "Key Components of an Effective State Nonpoint Source Management Program (pages 53-59 that is also on EPA's website at <http://water.epa.gov/polwaste/nps/upload/319-guidelines-fy14.pdf>).

We have enclosed two sets of comments to help you facilitate revisions to the document. The first addresses each individual component outlined in the guidance referenced above. The second enclosure is comments that were sent originally on the draft NPS plan and will help support and clarify the component comments. In general the comments address the need for more prioritization of watersheds and descriptions of how this will be accomplished. The plan needs to provide more information on causes of NPS pollution, monitoring, Best Management Practices (BMP's), measures of progress, and a schedule for meeting goals. The document will also benefit from some final editing and renumbering.

My staff is available to respond to any questions regarding these comments. Overall we are confident that with the recommended revisions, the plan can be completed early in 2015. We look forward to reviewing the next version of the plan. If you have any question, please contact Martha Turvey (206) 553-1354 or Jayne Carlin (206) 553-8512 of my staff.

Sincerely,

A handwritten signature in blue ink, reading "David Croxton", is positioned above the typed name.

David Croxton, Manager
Watershed Unit
Office of Water and Watersheds

Enclosures (2)

Comments on the Oregon Final NPS Plan – dated 9/30/2014

This review is based on EPA's "Key Components of an Effective State Nonpoint Source Management Program" (See pages 53-59 at <http://water.epa.gov/polwaste/nps/upload/319-guidelines-fy14.pdf>)

Component #1: The state program contains explicit short-and long-term goals, objectives and strategies to restore and protect surface water and ground water, as appropriate.

Location in Oregon's NPS Plan: Table 1 (pages 18-25)

Evaluation: The plan needs more specific milestones such as the number of WQ-10 stories per year or the number of high priority watersheds in which projects are being implemented. The plan provides general milestones with a majority of all timeframes identified as 2014-2018 (and one with a "?") with a focus on implementation steps and very few milestones track water quality improvements.

It appears that there are no objectives that address nonpoint sources of ground water pollution.

Projects on specific waters are prioritized for funding purposes but not for restoration or protection purposes.

Component #2: The state strengthens its working partnerships and linkages to appropriate state, interstate, tribal, regional and local entities (including conservation districts), private sector groups, citizen groups, and federal agencies.

Location in Oregon's NPS Plan: Section 3.2 is the added section on Public Review and Comment on the draft NPS plan, Section 3.4, page 16 Oregon NPS Management Program Authorities and Section 3.4 Other Management Programs that Address NPS, page 34 – there are two section 3.4., and Section 5, page 64 Grant Program.

Evaluation: The plan mentions many partnerships though it could be better organized. Recommend moving the Partnership section which starts on page 29, to follow section 3.4 on page 19. This would help illustrate the relationships referred to in Table 1.

Not sure how Section 5, page 71-72 supports the partnership linkages of category 2. There are examples of working partnerships in various parts of the document that could be used to support this category. For example the work described in addressing groundwater contamination on page 44.

The plan lists partnerships and includes agreements between agencies. It could add information that explains the role of each of these agencies preventing or addressing NPS pollution.

In accordance with the 319 guidance, the 319 NPS plan should explain how the state seeks public involvement from local, regional, state, interstate, tribal and federal agencies, and public interest groups, etc. on significant program changes. Although Oregon sought public comment on this plan, the plan did not explain how Oregon would seek public involvement on other significant proposed program changes.

Because the Plan does not include a list of high priority watersheds, there is nothing in the plan that explains how the state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds.

Component #3: The state uses a combination of statewide programs and on the ground projects to achieve water quality benefits; efforts are well integrated with other relevant state and federal programs.

Location in Oregon's NPS Plan: Section 3.1 – Need for Update of Oregon's NPS Management Plan, page 12, Section 3.3– Baseline Regulatory Statutes, page 30, Section 4– Management of NPS by Land Use

Evaluation: The General Description of NPS Management Program is section 3.3, (page 13) – there are two sections 3.3.

Do you mean Table 1, page 18-22, NPS MP Actions/Requirements, Priorities and Milestones. Section 3 of the report addresses the elements of component #3.

Generally, the Plan provides a thorough explanations of many of Oregon's water programs such as water quality standards, pesticides, drinking water, ground water, impaired waters/integrated report, TMDL development and associated implementation. It does not include some of the topics listed under Component #3 in the guidance such as state nutrient framework or strategy, some point sources (including confined animal feeding operations, enforcement of permitted facilities), clean lakes, wetlands protection, U.S. Army Corps of Engineers programs and climate change planning.

Under 5.3 Incremental Grants, the Plan notes that proposals are ranked through addressing NPS priorities identified in the request for proposals solicitation notice. The solicitation notice provides detailed information on the specific waters and actions needed. However, there is no explanation of Oregon's approach to prioritizing waters and watersheds to achieve water quality restoration and protection.

Component #4: The state program describes how resources will be allocated between (a) abating known water quality impairments from NPS pollution and (b) protecting threatened and high quality waters from significant threats caused by present and future NPS impacts.

Location in Oregon's NPS Plan: Section 3.4 – Oregon NPS Management Program Authorities Page 16 and Other Management Programs that Address NPS, page 34, Section 4.1.1.2 – Other programs and partners, page 48, Section 5 - Oregon 319 Grant Program

Evaluation: Section 4 addresses elements of component #4. It may be beneficial to point out that section 3.4.3 Drinking Water Protection and 3.4.4 Groundwater Protection define programs that are protective of high quality waters as identified in part (b) of this component.

The plan includes protection as a priority and explains how DEQ promotes watershed restoration and protection. DEQ could explain how Oregon decides on allocation between restoration and protection and where Oregon places its emphasis (majority of resources towards restoration because...) as well as how Oregon sets priorities and aligns resources between protection and restoration.

The Plan could describe how basin planning groups will go about identifying particular waters.

Component # 5: The state program identifies waters and watersheds impaired by NPS pollution as well as priority unimpaired waters for protection. The state establishes a process to assign priority and to progressively address identified watersheds by conducting more detailed watershed assessments, developing watershed-based plans and implementing the plans.

Location in Oregon's NPS Plan: Section 3.3.1 – Water Quality Standards, Section 3.3.3 – Total Maximum Daily Loads (TMDLs) and Water Quality Management Plans, Section 3.4 – Other Management Programs that Address NPS, Section 3.4.1 – Watershed Approach Basin Reports, Section 5.1 – Federal CWA Section 319(h) NPS Grant Funding (final), Section 6 – Other State Operated NPS Funding Sources

Evaluation: Need to include in Section 3.3.3 the additional requirements for conditions needed to use Section 319 funds, specifically: Need to include new information required to be in the TMDL documents (“...as a condition of using § 319 funds to develop TMDLs, the state will include the following supplemental information to support the load allocations specified in the TMDL: (1) an identification of total NPS existing loads and total NPS load reductions necessary to meet water quality standards, by source type; (2) a detailed identification of the causes and sources of NPS pollution by source type to be addressed in order to achieve the load reductions specified in the TMDL (e.g., acres of various row crops, number and size of animal feedlots, acres and density of residential areas); and (3) an analysis of the NPS management measures by source type expected to be implemented to achieve the necessary load reductions, with the recognition that adaptive management may be necessary during implementation.”)

The plan includes a description of how the state conducts assessments, develops TMDLs and implements them. Although the plan provides a web link to the assessment data base the plan may want to describe the information that can be found in this database.

Oregon does develop watershed based plans and it would be helpful to provide examples. They also have identified impaired waters. The intent of this component is to also identify priority waters and watersheds. What strategies are in place to prioritize the work? Although Oregon does prioritize its waters for funding purposes, Oregon does not describe how it identifies factors used to assign priorities to waters (either unimpaired waters for protection or waters impaired by NPS pollution) or how Oregon links its prioritization and implementation to other programs.

The plan does not describe how Oregon identifies important unimpaired waters that are threatened or otherwise at risk or explain why this is not feasible.

Component #6: The state implements all program components required by Section 319(b) of the Clean Water Act, and establishes strategic approaches and adaptive management to achieve and maintain water quality standards as expeditiously as practicable. The state reviews and upgrades program components as appropriate. The state program includes a mix of regulatory, non-regulatory, financial and technical assistance, as needed. In addition, the state incorporates existing baseline requirements established by other applicable federal or state laws to the extent that they are relevant.

Location in Oregon's NPS Plan: Section 3.1 – Need for Update of Oregon's NPS Management Plan, Section 3.2 – Public Review and Comment of Public Draft Oregon NPS Management Plan, Section 3.3 – General Description of NPS Management Program, Section 4.0 – Management of NPS by Land Use,

Section 3.4 – Other Management Programs (page 34) and Oregon NPS Management Program Authorities (page 16), Section 5 - Oregon 319 Grant Program (page 64)

Evaluation:

This section does not include a complete list of measures (BMPs) that would be used to control NPS pollution. It does include references to the US Forest Service National Core BMP's technical guidance but goes on to say that the BMPs in the technical guide "are deliberately general and non-prescriptive. As this document is national in scope it cannot address all possible practices...." Oregon's plan should list or reference guides containing specific BMP's. While the plan includes key programs that are involved in achieving implementation of measures, it does not include a schedule with goals, objectives, and specific annual milestones.

Component #7: The state manages and implements its NPS management program efficiently and effectively, including necessary financial management.

Location in Oregon's Plan: Section 3.1 – Need for Update of Oregon's NPS Management Plan, Section 5.0 – Oregon 319 Grant Program, Section 5.4 – Project Funding

Evaluation: The plan does explain that the Oregon 319 Grant Program manages the Section 319 funds so that they are primarily used for organizational capacity development and implementation activities, including monitoring used to support TMDL development, implementation and measuring progress towards achieving TMDL allocations.

The plan did not directly address financial management although the Plan stated that "it is critical for the 319 Grant Program to be implemented strategically and efficiently. Oregon's priorities are to streamline grant administration and reporting, and to allocate funds strategically." Committing to an initiative to streamline grant administration and reporting is great.

Where in the plan does Oregon explain how it ensures that section 319 funds complement and leverage funds available for technical and financial assistance from other federal sources and agencies.

Component #8: The state reviews and evaluates its NPS management program using environmental and functional measures of success, and revises its NPS management program at least every five years.

Location in Oregon's Plan: Executive Summary – page 7, Section 3.1 – page 12, Section 5.1 – pages 64-65, Section 7.0 – Water Quality Data and Assessments – page 75

Evaluation: The plan does mention the updating of the plan every 5 years. The plan does describe the use of the annual NPS report to track yearly progress of implementation of the approved NPS Management Program and prepare annual nitrogen, phosphorus, and sedimentation-siltation NPS pollutant load reduction estimates for NPS projects.

The plan needs to establish more concrete and appropriate measures of progress in meeting programmatic and water quality goals and objectives identified in key component #1 above such as the number of priority waters, reduction goals in phosphorus loading, etc. The plan does not appear to have a monitoring/evaluation strategy and schedule although it does mention current and future monitoring efforts.